

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

RICK FRANCIS CRADDUCK,

No. 03:10-CV-01372-PK

Petitioner,

ORDER

v.

RICK COURSEY,

Respondent.

Nell Brown
Office of the Federal Public Defender
101 SW Main Street, Suite 1700
Portland, OR 97204

Attorney for Petitioner

Lynn David Larsen
Oregon Department of Justice
1162 Court Street, NE
Salem, OR 97301-4096

Attorney for Respondent

HERNANDEZ, District Judge:

Magistrate Judge Papak issued a Findings and Recommendation (#34) on August 29, 2012, in which he recommends that the Court deny the petition for writ of habeas corpus (#2) and dismiss this case with prejudice. Petitioner timely filed objections to the Findings and Recommendation. The matter is now before me pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b).

When any party objects to any portion of the Magistrate Judge's Findings and Recommendation ("F&R"), the district court must make a *de novo* determination of that portion of the Magistrate Judge's report. 28 U.S.C. § 636(b)(1); Dawson v. Marshall, 561 F.3d 930, 932 (9th Cir. 2009); United States v. Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc). I have carefully considered Plaintiff's objections and conclude that the objections do not provide a basis to modify the recommendation that the complaint be dismissed with prejudice. I have also reviewed the pertinent portions of the record *de novo* and find no error in the Magistrate Judge's Findings and Recommendation.

Petitioner objects to the Findings and Recommendation because the Magistrate Judge stated that Petitioner had not cited to any authority that suggests "a valid waiver of counsel is negated when a trial court advises a petitioner, *prior* to accepting the waiver, that it is not going to grant any trial continuances." Objections to F&R, 2. An application for writ of habeas corpus is not granted unless the state court's decision is "contrary to, or involved an unreasonable application of, clearly established Federal law, *as determined by the Supreme Court of the United States*; or "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d) (emphasis added). Although Petitioner cited

to *Ninth Circuit* authority, he has not shown that the state court's decision is contrary to clearly established Federal law as determined by the Supreme Court.


Petitioner also objects to the Magistrate Judge's recommendation that a certificate of appealability be denied for Ground Two. Objections to F&R, 3. A certificate of appealability should issue if petitioner has made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2). I agree with the Magistrate Judge that petitioner has not met this standard.

CONCLUSION

The Court adopts Magistrate Judge Papak's Findings and Recommendation (#34). Therefore, the petition for writ of habeas corpus is denied and this case is dismissed with prejudice. A certificate of appealability should not issue because petitioner has not made a substantial showing of the denial of a constitutional right.

IT IS SO ORDERED.

DATED this 24 day of November, 2012.


MARCO A. HERNANDEZ
United States District Judge